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DELTA STEWARDSHIP COUNCIL

A California State Agency

December 2, 2016

Chair
Randy Fiorini

Jeff Butzlaff
Bethel Island Municipal Improvement District
P.O. Box 244
3085 Stone Road
Bethel Island, CA 94511
DistrictStaff@bimid.com

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Frank C. Damrell, Jr.
Patrick Johnston
Mary Piepho
Susan Tatayon
Ken Weinberg

Executive Officer
Jessica R. Pearson

RE: Proposed Horseshoe Bend Levee Improvement Project Initial Study/Mitigated Negative Declaration

Dear Mr. Butzlaff:

Thank you for the opportunity to review and comment on the *Bethel Island Municipal Improvement District Horseshoe Bend Levee Improvement Project Initial Study/Mitigated Negative Declaration*, hereafter referred to as the "*Initial Study*".

As you may know, the Council is a State agency created through the Delta Reform Act of 2009 to develop and implement a legally enforceable long-term management plan for the Delta and Suisun Marsh. The Delta Plan applies a common sense approach based on the best available science to achieve the coequal goals of protecting and enhancing the Delta ecosystem and providing for a more reliable water supply for California, while protecting and enhancing the unique cultural, recreational, and agricultural values of the Delta as an evolving place.

The Delta Reform Act also called on the Council to lead a multi-agency effort to update priorities for State investments in the Delta levee system. This effort is focused on prioritizing a reduction in the risk from levee failures, including protecting people, property, and State interests. It also aims to advance the coequal goals of improved water supply reliability and restoring the Delta ecosystem, as well as protecting and enhancing the values of the Delta as an evolving place. With these goals in mind the Council has been developing the Delta Levees Investment Strategy (DLIS)¹ to prioritize levee investment in the Delta. It is with DLIS and the coequal goals in mind that Council staff submits these comments.

¹ <http://deltacouncil.ca.gov/delta-levees-investment-strategy>

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

Comments on the *Initial Study*

It is our understanding that the *Initial Study* would modify the existing levee at Horseshoe Bend over three years to meet Department of Water Resources (DWR) Bulletin 192-82 levee design standards, while implementing mitigation measures to avoid, minimize, and compensate for any project effects. We appreciate the work that has gone into preparing the *Initial Study*. Making this work available to a wide variety of stakeholders is important for communicating the project goals and any potential impacts. As such, we suggest that BIMID provide (1) a summarized table of the total areas to be impacted (in addition to the references throughout the document), and (2) the technical supporting studies online, rather than make accessible only at the BIMID offices. In addition, the *Initial Study* should acknowledge the Delta Plan in its discussion of the project's environmental setting and identify any inconsistency with the Delta Plan, as described in section 15125(d) of CEQA guidelines. To assist you, we offer some general guidance below.

Adequacy of the Project Description

We appreciate the concise language used for the project description. However, this leaves some areas unclear. BIMID could improve the *Initial Study* by providing additional information related to construction and mitigation actions, especially waterside activities:

- The project description notes that landside work will initially include up to 4 feet of fill, with potentially more added to the levee in years two and three, and that waterside work would not use fill obtained from the Borrow Site. Is the 0.75-acre bench to be created through levee setback or fill? If the latter, from where would waterside fill be obtained, and how much would be required?
- Would revetment cover both the levee waterside and bench?

Applicable Delta Plan Policies

In evaluating whether the project may create any inconsistencies with the Delta Plan, potentially relevant policies include, but may not be limited to:

1. **Coequal Goals.** Delta Plan Policy **G P1** (California Code of Regulations [CCR] 23 section 5002) describes findings to establish consistency with the Delta Plan, including findings related to mitigation measures, best available science, and adaptive management. In some cases, it may not be feasible for a covered action to be fully consistent with all relevant regulatory policies, but it may still be consistent with the Delta Plan if on whole it is consistent with the coequal goals. In any case, it is important to clearly describe how the project contributes to the achievement of the coequal goals, as defined in Water Code section 85054 and the Council's Delta Plan implementing regulations (23 CCR section 5001(h)).

2. **Mitigation.** Delta Plan Policy **G P1** also requires that actions not exempt from CEQA and subject to Delta Plan regulations include applicable feasible mitigation measures consistent with or more effective than those identified in the Delta Plan Environmental Impact Report. These mitigation measures can be found in the Delta Plan Mitigation and Monitoring Reporting Program (MMRP) document available at <http://bit.ly/DeltaPlanMMRP>. We understand that because not all site surveys have been carried out, the final mitigation requirements cannot be known at this time. However, recognizing that mitigation may not always perform as expected, we encourage you to include an adaptive management plan in the MND for monitoring impacts and progress toward project objectives, and modifying mitigation measures if necessary. Such monitoring could allow BIMID to monitor the effectiveness of wetland mitigation and allow for sharing of results so that others can benefit from the district's experience. Delta Science Program staff is available to provide support to BIMID in development of such an adaptive management approach.
3. **Habitat Restoration.** Delta Plan Policy **ER P2** (23 CCR section 5006) calls for restoration of habitats at appropriate elevations. Although this is not a habitat restoration project, we encourage the district to consider how the "fish-friendly" bench will be affected by sea level rise. Our own studies estimate average sea level rise at the Golden Gate of 5.7" and 11.0" by 2030 and 2050, respectively.² Consideration of what approaches might extend the utility of the bench with higher average water levels is warranted.
4. **Prioritization of State Investments.** Delta Plan Policy **RR P1** (23 CCR section 5012) requires that discretionary State investments in Delta flood risk management be prioritized to address emergency preparedness, response and recovery. As a non-project levee receiving State funds, funding is linked to benefits provided. We appreciate that BIMID has outlined the benefits anticipated from project completion. It would be helpful to also include by reference the Project Funding Agreement (BI-15-1.0-SP) and list the associated benefits in more detail.
5. **Invasive Species.** Delta Plan Policy **ER P5** (23 CCR Section 5009) calls for avoiding introductions of invasive nonnative species or habitat that supports such species. Work conducted by the UC Davis Center for Spatial Technologies and Remote Sensing (CSTARS) has found large changes in submerged aquatic vegetation in Franks Tract in the past, fluctuating with environmental variables as well as management actions. BIMID should consider how to minimize the spread of such nonnative invasive species along the proposed bench and how it will address their spread along the margins of Piper Slough. A design that maintains appropriate water velocities and depth can help prevent the spread and colonization of invasive aquatic vegetation. Similarly, post-construction maintenance,

² <http://deltacouncil.ca.gov/docs/delta-levees-investment-strategy-sea-level-rise-methodology>

such as regular monitoring and removal of nonnative invasive vegetation, can also aid in reducing this risk.

Delta Plan consistency

BIMID should consider whether the *Initial Study* is a "covered action" under the Delta Plan. State and local agencies are required to certify their projects' consistency with the Council's 14 regulatory policies if their proposed activity is a "covered action" under the Delta Plan, which includes plans, programs, or projects (as defined by Public Resources Code Section 21065) that would occur, in whole or in part, within the Delta or Suisun Marsh. According to the Delta Reform Act, it is the state or local agency approving, funding, or carrying out the project that must determine if that project is a "covered action" and, if so, file a certification of consistency with the Delta Plan. Council staff is available to consult with you further, as provided by Water Code section 85225.5, about this process.

Final Remarks

Once again, thank you for the opportunity to review and provide comments on the *Initial Study* and look forward to continuing to work with BIMID. If you would like to discuss any of the suggestions included in this letter, please contact Dan Constable at daniel.constable@deltacouncil.ca.gov or 916-322-9338.

Sincerely,

A handwritten signature in black ink, appearing to read "Terri Gaines", with a stylized, cursive script.

Terri Gaines
Program Manager III,
Water Resource Management and Risk Reduction
Delta Stewardship Council